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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Iowa Telecommunications and
Technology Commission
Petition for Waiver

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)
) CC Docket No. 96-45
) AAD/USB File No. 98-37
)
)

**REPLY COMMENTS
OF THE IOWA UTILITIES BOARD**

The Iowa Utilities Board (IUB) hereby submits the following reply comments in support of the Petition for Waiver, filed by the Iowa Telecommunications and Technology Commission on behalf of the Iowa Communications Network (ICN), Public Notice released February 13, 1998.

Summary

The ICN should be eligible to directly receive universal service funding for telecommunications services it provides to schools, libraries and rural healthcare providers. Due to the unique nature of the ICN it cannot secure discounts on behalf of schools and libraries as the FCC describes in its *Fourth Order on Reconsideration*. Surely, Congress' intent to encourage advanced telecommunications service for schools, libraries and rural healthcare providers was not meant to be unavailable for schools, libraries, and rural healthcare providers in Iowa. Nor did Congress express any intent to disrupt existing vehicles for achieving

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the same result.

The IUB adopts the general definition of a common carrier to be one holding oneself out to serve the clientele one is suited to serve, indiscriminately. Further, IUB concurs with ICN's position that an entity need not offer the "entire range of common carrier services" to qualify as a common carrier. Finally, IUB disagrees with the assertion made by Ameritech, among others, that ICN does not qualify as a common carrier on the fact that the services it offers are not offered to "any member of the public".

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The ICN Should Receive Universal Service Funds

When the Telecommunications Act of 1996 was drafted, it included provisions under § 254 to assure that schools, libraries and rural healthcare providers have access to advanced telecommunications services. Iowa has been very aggressive in assuring that its schools, libraries and rural healthcare providers have such access through the Iowa Telecommunications Network (ICN). However, the state's schools, libraries, and rural healthcare providers would lose millions of dollars in federal universal service support if the ICN is not eligible to directly receive universal service support. Surely, Congress' intent to encourage advanced telecommunications services for schools, libraries, and rural healthcare providers was not meant to be unavailable for schools, libraries, and rural healthcare providers in Iowa. Nor did Congress express any intent to disrupt existing vehicles for achieving the same result.

In its *Fourth Order on Reconsideration*¹, the FCC suggested that state networks be considered consortia that can secure discounts on behalf of schools and libraries. The manner in which the FCC describes "state telecommunications network" implies that it had in mind state networks that act as resellers of telecommunications services or lease facilities to provide service. Providing service in this manner would be the only way a state network would be able to secure discounts and pass them through to the schools and libraries receiving the services.

The ICN is in the unique situation that it cannot secure such discounts

because it is a facilities based provider of telecommunications services. The ICN provides service through its own fiber optics network. Therefore, there are no underlying carriers to secure discounts from.

The structure of the ICN took its shape beginning with legislation passed in 1989. Major investments were made in the ICN's facilities long before the Telecommunications Act of 1996 was passed. The particular form taken by Iowa in its proactive efforts to assure the availability of advanced telecommunications services to its educational systems should not now cause the state to be punished by denial of universal funding to this state's schools, libraries, and rural healthcare providers that is available to their counterparts in other states.

If the FCC's existing view prevails, rate payers of Iowa will contribute to a universal service fund which cannot go towards the funding of advanced telecommunications services to schools, libraries, and rural healthcare providers in Iowa. Instead, the taxpayers of Iowa will have to provide separate funding to assure that Iowa's educational system has access to the services that the federal universal service fund is designed to fund.

¹ FCC 97-420, at ¶ 183

The ICN Should be Considered as a Common Carrier

The IUB supports the general definition of a common carrier to be one holding oneself out to serve the clientele one is suited to serve, indiscriminately".² Further, IUB concurs with ICN's position that an entity need not offer the "entire range of common carrier services" to qualify as a common carrier.³ Finally, IUB disagrees with the assertion made by Ameritech, among others, that ICN does not qualify as a common carrier on the grounds that the services it offers are not offered to the public at large.⁴

ICN does not discriminate in offering its services but rather encourages the public use of voice, data, and interactive communications services. ICN is unique in that it owns and operates its own network which is controlled and operated by the State of Iowa. ICN provides multi-point voice, data, and interactive video services to public and private classrooms, rural healthcare providers, and public libraries throughout the state. ICN also serves numerous public agencies including various police agencies and judicial offices.

Certain parties filing comments have suggested that ICN may not provide a broad range of carrier services to qualify as a common carrier.⁵ The Court of Appeals for the District of Columbia in *NARUC I*, and the FCC in its *Fourth Order on Reconsideration*, however, have clearly expressed that an entity providing

² *NARUC v. FCC*, 525 F.2d 630,641 (D.C. Cir. 1976).

³ Fourth Order on Reconsideration, FCC 97-420, at ¶ 187.

⁴ Ameritech comments at 2.

communications service need not offer "the entire range of common carrier services" to qualify as a common carrier.⁶ ICN offers voice, data, and interactive communications services which appear to be comparable with services currently offered by most communications carriers.

The IUB disagrees, however, with reponses made by Ameritech, among others filing comments, that services offered by a communications provider must be offered to more than a "select group of members" of the public.

ICN is a state-mandated entity that was created for the purpose of increasing public accessibility and use by offering communications services to public and private institutions which may otherwise not be available to the public. As previously noted, ICN is unique in that it is a network owned and operated by the State of Iowa. Moreover, ICN has successfully served over 500 schools, hospitals, libraries, and other public agencies in over 1,600 locations throughout Iowa. Ameritech's assertion that if "[ICN] would refuse to provide services to any member of the public that requested it [...] then it is not a common carrier", simply goes too far. Given the ICN's unique structure, the FCC should regard ICN's offerings as being made to a sufficiently broad market for the INC to be considered a common carrier for purposes of § 254.

ICN's function is one which furthers, not hinders, the goals of § 254 of the Telecommunications Act. It is a system which was implemented with the common goal in mind to offer better services to those communities which otherwise would not

⁵ Id.


have access to such services offered in more populated communities. Thus, Iowa's intent in establishing ICN was to increase accessibility, not diminish consumer choice as is implied by some parties. Arguments which portray ICN's services as limiting or discriminating are not accurate and misstate the underlying purpose of ICN. Without the ICN, it is predictable that fewer customers would be served and more persons in rural Iowa would be without the services currently offered through ICN.

Further, Ameritech, among others, have further argued that ICN should not be considered as a common carrier since it fails to meet the common law standard announced in *NARUC I*, that a carrier cannot be a common carrier "where its practice is to make individualized decisions in particular cases, [...] and on what terms to deal... Moreover the characteristic of holding oneself out to serve the public indiscriminately appears to be an essential element."⁷ ICN offers its services on standard terms and conditions. It offers its services from an established rate schedule and does not negotiate individually with any of its customers.

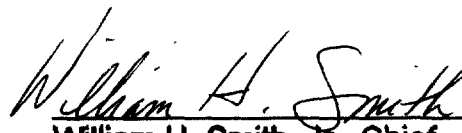
IUB concurs with ICN in its statement that the State of Iowa should not be unfairly penalized from receiving universal service funds simply because Iowa lawmakers had the foresight long before the adoption of the Telecommunications Act to address the specific needs of rural schools, healthcare providers, and public libraries throughout Iowa.

⁶ See *NARUC I*, 525 F.2d 641.

Respectfully submitted,


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⁷ See *NARUC I*, 525 F.2d 641.